

# UNREPORTED SCANDALS

## The power of personality and legal bluster

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In the summer of 2018, a twentieth-century scandal recaptured the British public's imagination, prompted by a new television dramatisation of events that took place 40 years earlier. The BBC mini-series, and the book on which it was based, portrayed the political downfall of Jeremy Thorpe, leader of the Liberal Party from 1967 to 1976, who was prosecuted and acquitted of the gravest charge ever brought against an active Member of Parliament: conspiracy to murder. The BBC also used the opportunity to air, for the first time, a *Panorama* documentary made in 1979 about the scandal. This investigation, updated with new material, questioned the protection of Thorpe by 'powerful political forces' before and after the trial. The 'protection' included not only members of government and police, but also the media: why were the mass media reticent to report allegations in the early stages of the scandal? Why did the BBC decide not to air its documentary contemporaneously? Why did ITV, which had prepared its own programme to broadcast post-trial, also refuse to air its account and lock away all its copies and source material (Crick 2018)?

One explanation lies in English law, part of the so-called 'chilling effect' in which the media are deterred from reporting stories for fear of legal action.<sup>i</sup> Richard Ingrams, former editor of *Private Eye*, has described how Thorpe threatened 'the big stick' of criminal libel against the media (Naughtie 2018). The threat was not empty. Following a story published by *Private Eye* prior to his arrest and prosecution, Thorpe is reported to have issued a libel writ and referred the matter to the Director of Public Prosecutions and the Attorney General on grounds of contempt of court (Macqueen 2011, 82). It is also alleged that Thorpe considered threatening his former lover Norman Scott with defamation action (Preston 2016, 10). Onerous defamation laws cannot, however, provide a full explanation. As an article in the *New York Times* contemporaneous with Thorpe's trial observed, many powerful and high profile gay men (at a

time when homosexuality was illegal) maintained privacy of their sexual orientation and activity partly because of 'stringent libel laws' but also because of the deference of the British police to the upper classes: British newspapers and the police 'intruded very little upon this world' at the time (Apple 1978). This interpretation suggests it was the combination of both legal and social factors that deterred such reporting.

When the Thorpe affair is considered alongside other 'unreported' events in other high profile scandals, it is clear that legal factors do not alone explain why journalists and the media avoid the publication of particular facts concerning the dishonest, abusive and corrupt behaviour of high profile individuals. Their social and political relationships must also be considered: some of these individuals have been generous charitable donors and even described as 'national treasures'. They have powerful charisma and extensive personal networks, which have secured them favourable column and screen space. These protagonists of scandal wield social power with the assistance of the British media, and this power helps protect them from being exposed. The sociology of media can be drawn upon to understand the way in which scandal is reported (or unreported), but theoretical explanations of newsgathering decisions have often overlooked the specific characteristics and relevance of the law and legal threats.<sup>ii</sup> Benson (2010, 619) suggests that while 'forces shaping news production are often intertwined and inter-related', a 'simple lumping together of factors' would limit insight into national news systems. In his view, it is important to isolate and test variables, such as the effect of libel (2010, 621). What follows is a preliminary effort to identify common features in two UK case studies, which can help us understand the media's role in reporting scandal more generally.

## **Case study one: Jimmy Savile**

It is 'chilling' in a different sense that Jimmy Savile, the popular and eccentric British television and radio presenter awarded both an OBE and knighthood, did not face prosecution for widespread sexual crimes during his lifetime. Although it is too late to prove any allegation against him in a court of law, it is accepted in official accounts that he was 'one of the UK's most prolific known sexual predators' with a level of formally recorded criminal allegations thought to be 'unprecedented in the UK' (Gray and Watt 2013, 24). Various reviews conducted posthumously show that numerous allegations were reported against him before his death but that he escaped full police investigation and scrutiny by other relevant institutions – including the national media. The evidence, assessed with the benefit of hindsight, shows that Savile deployed an audacious and manipulative strategy of hiding in plain sight until his death in

2011; astonishingly, it was successful. The media played a part in his non-exposure by first creating a persona behind which he was able to hide, and second, by not reporting critical allegations. As the television critic Sam Wollaston observes, numerous institutions, including the press, were duped:

Somehow – incredibly, appallingly – Savile used his celebrity and his influence, his connections, his charity work, his instinct for vulnerability and choice of victims, the times he operated in, his eccentricity, that bloody cigar – to put up a thick smoke screen, and get away with it until after his death.

(Wollaston 2016)

## **Case study two: Lance Armstrong**

The Lance Armstrong doping scandal provides a relevant example to compare and contrast. Like Savile, the American cyclist Armstrong had a strong media personality and reputation for extensive charitable work, which helped suppress allegations of doping activity in cycling races, to which he later admitted. Despite the radically different nature of the allegations in each case study, it is not the first time the comparison has been made. Armstrong and Savile were ‘brothers of sorts’, according to Simon Kuper, writing in the *Financial Times* in 2012. In his analysis, ‘each man’s story illuminates the other’s’ (2012). In the sections that follow, examples from each case study are used in a discussion of the common factors that facilitate the non-reporting of a potential scandal.

## **National treasures**

Readers of the satirical magazine *Private Eye* will be familiar with journalists’ tendency to bestow ‘national treasure’ status on high profile figures, for particular sporting or cultural achievements coupled with apparent public approval. When Savile died, this unofficial honour was awarded by numerous media outlets for his extensive charity work and unconventional personality: ‘tributes poured in for national treasure Sir Jimmy Savile’, according to the *Sunday Mirror*; while the *Sunday People* reported that a national treasure had been ‘lost’ (Marsh 2013). Lance Armstrong had a similarly favourable profile in the media owing to cycling triumphs and his charity work, notably setting up the Lance Armstrong Foundation which provides support to those suffering from cancer. He received glowing endorsement from the British and American media: the ‘onetime “Golden Boy of American Cycling”’ (Forde and Diamond 2005).

The revered status of these men was not without a darker edge: for Savile, there were hints of allegations of child abuse (alluded to briefly, but not fully explored in Louis Theroux's documentary on Savile aired in 2000, for example); and for Armstrong, speculation that he had blood doped and used performance enhancing drugs. But such rumours were overshadowed by overwhelmingly positive coverage of their perceived achievements in their respective professional fields and for their charitable deeds. When they did eventually and unequivocally fall out of favour, the national treasure and golden boy monikers were repeated again in the media, to describe how they had been previously perceived and publicised.

## **Libel threats**

Despite what is now revealed to be extensive evidence supporting allegations of wrongdoing in both cases, Savile and Armstrong received minimal negative attention for many years, before the final exposés that led to their falls from grace. The treasure and golden status may have partially cushioned them, but they were also protected through the spectre of the law, and their deep pockets. Both used libel law to threaten their accusers. The researching of 'unreported' stories and libel presents a problem: it is often difficult to collect hard evidence of reported threats against journalists, and to ascertain claims of threats against the media and other individuals. However, documents released during the aftermath of the Savile scandal did provide such hard evidence, such as the transcript of a Surrey Police interview with Savile at Stoke Mandeville Hospital conducted in 2009 – an exchange later assessed by the HM Inspectorate of Constabulary to be 'Savile-led rather than police-led' (HMIC 2013, 27).

The transcript recorded Savile's boast that he threatened legal action to deter newspapers from publishing allegations of sexual abuse. Outlining his 'policy' towards allegations, Savile described how he had previously reached settlements out of court with five newspapers (Surrey Police 2009, 3). Savile then appears to threaten similar legal action on the basis of the allegations in the interview, that he has a 'policy' which will 'swing into action' in the face of allegations. Tellingly, he explains that he has never actually sued, 'because they all run away and say "shush pay him up"' (ibid., 4). He describes how he previously settled cases for £200,000 and that he is 'known in the trade as Litigiousness' and 'willing to pull people into court straight away, no messing, thank you ... if you're Litigiousness, people get quite nervous actually' (ibid., 5).

Whilst Savile's claims can be understood as baseless bluster with the benefit of hindsight, it is a chilling passage in which the celebrity claims to own the hospital in which he is being interviewed and that he can normally 'brush [allegations by women] away like midges', and appears to be indirectly threatening the police as well as his accusers, suggesting that the interviewing officers will be needed in court as witnesses. The documents expose a bald – and bizarrely successful – attempt to deter the police's investigation with grandiose statements about his self-perceived legal and social power. Whether or not the Surrey police found these threats credible (the interviewing officers were criticised by HM Inspectorate of Constabulary for not challenging Savile's various assertions during the 'ineffective' interview; HMIC 2013, 27), the case was referred to the Crown Prosecution Service, which advised there was insufficient evidence to charge (Surrey Police n.d.).

A fear of Savile's propensity for libel threats is also noted elsewhere. The former *Sunday Mirror* editor Paul Connew has described how the newspaper did not pursue allegations made by two victims in 1994 for fear of a libel suit. According to a report in the *Press Gazette*, Connew blamed a lack of resources at the post-Maxwell *Mirror* and the fear of a 'starstruck' jury at any libel trial (Turvill 2013a). In an interview with the Associated Press, Connew described how the victims were worried about the prospect of giving evidence in any potential trial: 'One of them said memorably: "Who's going to believe us in the witness box against Jimmy Savile? He's friends with Prince Charles, Princess Diana ... He's been blessed by the pope"' (Satter 2012).

Similarly, the late tabloid editor Brian Hitchen partially blamed the lack of reporting (he said he had known of allegations for 45 years) on Britain's libel laws that 'too often help make those like Savile untouchable' (2012). Although Hitchen did not expand this point, it is likely his view is based on two factors: the high cost of defending a claim and the structure of English libel law, in which the defendant rather than the claimant bears the burden of proof. To rely on a defence of truth, they must prove that the allegations are substantially true, deemed by critics of English libel law to be unfairly burdensome on defendants. Whether Savile would have been successful in the libel courts was never tested because he settled the complaints before it reached that stage.

Often critics discuss deterrence in general terms rather than give specific examples of how libel has deterred investigation of a particular story; here, however, Connew directly connects

an editorial decision and a fear of potential libel action. More starkly, there is evidence of Savile's ill-informed bluster on police record and his claim to have settled with five newspapers. If, as seems likely, he shared his 'policy' with journalists as well as police officers, it is probable they would have been scared of running stories. What is less explicable, however, is why they ran such sycophantic and glowing coverage in its place, and why they did not cover the story for over a year after his death, when the threat of libel action was removed.

Lance Armstrong also turned to libel in an attempt to deter reporting into allegations of doping. In the English courts he successfully sued the *Sunday Times* in legal action reported to have cost the paper £1 million (O'Carroll 2013). While the case never reached full trial, following two High Court decisions and a Court of Appeal ruling, the *Sunday Times* decided to try and settle the case. With a high level of meaning set by the court – that the *Sunday Times* was accusing Armstrong of being a cheat and a liar – the publication reportedly decided it could not risk a full trial: 'it did not believe the evidence it had, although strong, was enough to satisfy a jury that Armstrong was a cheat' (O'Carroll 2013). An initial effort to reach an out of court settlement failed, but a deal was later negotiated by the paper's then managing editor in the UK while Armstrong's lawyer was visiting on a golf trip.

The evidence of Armstrong's threats can be found in media reports; he was said to be winning 10–0 in lawsuits, for example (*USA Today* 2006). Whereas the details of Savile's settlements remain unclear, the details of Armstrong's case against the *Sunday Times* is well-reported and documented online. Furthermore, Armstrong has publicly commented on his legal tactics, following his admission of doping. Asked about his litigiousness during his confessional interview with Oprah Winfrey in 2012, he admitted he didn't even know how many people he had sued over allegations of doping. Discussing his treatment of the masseuse Emma O'Reilly, who he admitted he had bullied following her claims about his use of the drug cortisone, he said: 'I don't feel good. I was just on the attack. The territory was being threatened. The team was being threatened. I was on the attack' (BBC Sport 2013a).

The evidence suggests that Armstrong's tactics worked: the *Sunday Times*' journalist David Walsh was unable to find a publisher for his *LA Confidential* book<sup>iii</sup> in the UK and national titles avoided the story. Even the story that the *Sunday Times* was sued over was not a full extract from the book, according to *The Guardian*'s extensive report of the litigation (O'Carroll 2013). Like Savile, Armstrong used legal threats to deter journalists from pursuing a legitimate

public interest story. Unlike Savile, he has since admitted to wrongdoing on public television. He also told Oprah Winfrey he would be willing to apologise to Walsh (BBC Sport 2013b).

## **The media blind eye**

There are differences in the media treatment of Savile and Armstrong. While both individuals received favourable coverage in the UK press, the Armstrong allegations were better reported and more publicly acknowledged in the media, albeit it in a very limited way, in Walsh's book, co-written with the French journalist Pierre Ballester and published in France, and, separately, by another *Sunday Times* journalist, Paul Kimmage. However, the rumours about Savile 'liking little girls' were merely hinted at by the journalist Lynn Barber in 1990 (Barber 2012), Simon Hattenstone (2000) and the filmmaker Louis Theroux in 2000 ('When Louis Met ... Jimmy' 2000). Orla Barry, a journalist who did follow up on the exchange in the Theroux documentary – in which Savile admits he uses the 'I don't like children' line to dispel rumours that he is a paedophile – was reportedly 'taken aback to discover that more journalists had not put the question to [Savile] ... given the prominence of the rumours when he was alive' (Horan 2012).

Notwithstanding the differences, both men enjoyed immunity from effective media scrutiny, and the evidence above indicates that both Armstrong and Savile considered libel a key weapon in their armouries. But can libel fully explain the reluctance to cover the story? In the Savile case, how can one account for the glowing endorsements given by the press in place of hard-hitting allegations? Robertson has suggested that allegations about Jimmy Savile and the politician Cyril Smith 'could only surface after their deaths' because of libel law (2013), but that does not explain the year-long gap between Savile's death and the eventual airing of the allegations in full on ITV's *Exposure* programme in autumn 2012. The BBC has been heavily criticised for its decision to abandon a posthumous investigation by its *Newsnight* programme (which led to the Pollard Review, discussed below). In an interview with the *Press Gazette*, Walsh described how there was no hope for coverage of the Armstrong doping allegations following the *Sunday Times* litigation in 2004. He singled out the BBC as 'particularly poor'. Walsh described how fear of losing access to sources influenced fellow cycling journalists' reluctance to pursue the story. Walsh was not allowed to travel with them 'because they thought it might anger Team Armstrong – and because "we need his quotes, we need his favour"' (Pugh 2012).

This, as with the Savile case, points to extra-legal and social reasons for avoiding the allegations, although risk of losing access to the source could not explain media reluctance to pursue the Savile story after his death. As *The Guardian* journalist Michael White describes, 'the tabs routinely spike stories on grounds of taste and judgment as well as legal concerns' (White 2012). Beyond this, there is a question of audience. Walsh describes how an American photo-journalist, James Startt, helped put him in touch with a source, after sensing 'there wasn't an appetite in his own country for the story' (Walsh 2012).

What were the most plausible explanations for the Savile silence? As already noted, libel does not explain why the allegations were not pursued after he died, or the reasons for Fleet Street's lack of interest in the story. BBC *Panorama* journalist Shelley Jofre suggests that 'a lot of the newspapers have questions to answer about that [long period of non-reporting] because everybody claims to have known' (Turvill 2013b). Roy Greenslade sets out the puzzle succinctly:

The BBC's current problem [in explaining its abandonment of the story] is that it appears to have shelved the screening of a *Newsnight* investigation when it did have very firm evidence and, given that Savile was dead, it could not have resulted in a libel action.

(Greenslade 2012)

This problem is at the heart of the Pollard Review dealing with the BBC's non-coverage of Jimmy Savile allegations, although the investigator Nick Pollard argues 'the most worrying aspect of the Jimmy Savile story for the BBC was not the decision to drop the story itself. It was the complete inability to deal with the events that followed' (Pollard 2012, 22, para. 4). His report shows evidence of conflicting views about the reasons for the abandonment of the programme. In emails to a friend, *Newsnight* journalist Liz MacKean suggested that conflicting tribute programming explained her editor Peter Rippon's reluctance to run the investigation by making 'impossible editorial demands', having initially commissioned it (ibid., 86, para. 142). Rippon firmly denied MacKean's account, however, claiming that he was challenging the story as part of the editorial process. Further, he could not recall the detail of a conversation in which MacKean claimed he played down the severity of the allegations that were being investigated (ibid., para. 144). Rippon admits he may have been guilty of 'self-censorship' (ibid., 31, para. 45) but clearly disagrees with MacKean as to why the investigation was not broadcast.



Pollard acknowledges the conflicting versions of events between the two journalists, which are 'difficult to resolve' (ibid., 86, para. 146). He suggests that Rippon was trying to cross an editorial threshold in order to run the story, although finds that he 'did make at least some of the comments (or, at least, comments similar to them) that Ms MacKean reports in her e-mails to friends' (ibid., 87, paras 147–148). For MacKean's colleague Meirion Jones, there was little 'journalistic' logic for Rippon's decision and 'that it could only have been motivated by pressure caused by the Christmas tribute programmes' (ibid., 91, para. 168). Pollard found no evidence of this and did not agree; in his final findings, he states that no 'inappropriate managerial pressure or consideration' influenced the editorial decision of Mr Rippon not to run the Savile story although he allows that the 'decision was clearly influenced by [Rippon's] two managers' (ibid., 95, para. 11).

The Pollard report highlights the multitude of competing factors influencing a single editorial decision to shelve a programme. Detailed examination of available evidence produces various and conflicting accounts from the parties involved; this coupled with a lack of evidence, makes it difficult to identify the reasons for an 'editorial' or 'journalistic' decision to avoid a particular topic.<sup>iv</sup> How to make sense of these conflicting accounts, then? Editorial decisions are subject to a complex web of competing factors, of which libel is just one. The incontrovertible evidence of Savile and Armstrong's threats and pursuit of libel action suggests that libel played a significant role in deterring both investigation and publication of allegations, but the collective non-reporting of the story was subject to a number of other influences as well, including the high social status of both individuals, which, ironically, the media had helped create through sycophantic and unchallenging coverage.

## **The lone reporter**

There is a final comparison to draw between the sustained non-reporting of the Savile and Armstrong allegations before the scandals broke: the role of the lone reporter (Tumber 2013). While there were several journalists working on these stories, it is the dogged work of a select few individuals that eventually brought the full details to light. Walsh is the obvious candidate in the Armstrong doping case. In the Savile case, Liz MacKean, Meirion Jones and Mark Williams Thomas, a former police detective and specialist in child abuse, all investigated allegations, with the latter decamping to ITV when it became obvious the BBC was not going to broadcast the story on *Newsnight* (see Keogh 2013). It was Miles Goslett, however, who

pursued the story of the BBC's abandonment of the investigation, and whose report in the magazine *The Oldie* was the first substantial report of the editorial fallout.

Goslett's experience provides the final conundrum of this case study. Upon discovering that the BBC had shelved the report, and free of libel concerns (Savile was dead), he tried to pitch the story to Fleet Street editors. He assumed the story would 'sail into any newspaper' (Goslett 2012). Over two weeks he contacted six national news desks. None was interested. Among the reasons he was given were: 'bad taste' so soon after his death; it would not be worth pursuing Savile if the police had not during his lifetime; that the story was 'best avoided' for the time being. What was the significance of the timing? Goslett introduces a new deterrence factor: the Leveson Inquiry and the risk of his recommending statutory regulation. According to Goslett, one senior executive 'admitted that because his editor was about to appear in front of Lord Leveson's [*sic*] inquiry into press ethics, then at its height, it would be unwise to run the piece'.

This does not feel a wholly satisfactory explanation, however. There was no social, regulatory or legal retribution for *The Oldie* and yet the national newspapers continued to ignore the story. This surprised Goslett, who told the *Press Gazette* that save a follow up piece by the *Telegraph* the facts revealed by *The Oldie* still did not entice the rest of the British Press. 'What seemed utterly bizarre to me was that nobody really went digging after that,' he said (Turvill 2013a). Then, in October 2012, when ITV made its dramatic exposé, the story really exploded, dominating front pages for weeks on end. Leveson had not yet reported his findings, so why did Fleet Street suddenly wake up at this point? The newspapers may have felt protected by the evidence of the ITV documentary, but they showed far greater inclination to go after the story, devoting front pages and extensive inside and online coverage to the scandal. As Goslett remarked, television is 'hugely powerful' for bringing an issue to attention and bringing new sources forward (Turvill 2013a). Although Goslett appears convinced by the Leveson reason, he still seems a little bewildered by his difficulty in pitching the story prior to the ITV documentary: 'I have suggested that Leveson might have had something to do with it – and I can't really imagine what else it could have been' (Turvill 2013a).

Another difficulty with Goslett's explanation is that the newspapers *did* go after the type of stories that would be very likely to catch Lord Justice Leveson's attention while the Inquiry was ongoing.<sup>v</sup> Perhaps fear of Leveson's critical eye influenced some news desk editors' decisions regarding the Savile story, but two factors played a greater role: first, a tendency for

herd-like behaviour dissuaded them to run the story when they knew another broadcaster had run shy (and if they had previously run with an angle focussing on the BBC's abandonment of the story rather than the actual allegations of abuse, it would be difficult to justify why they were also stepping around the edge of the story and had failed to report it in the past); and second, the social reverence given to Savile in their own national treasure tributes.

## Conclusion

This chapter has examined the influences on editorial decisions not to report allegations in the earlier stages of what become high profile scandals. Law and legal threats cannot be blamed alone, and when cited as a reason must be scrutinised as much as the available evidence allows. Too often, academic and media accounts repeat anecdotal evidence about the 'chilling' role of the law without considering the evidence in detail. A more plausible and nuanced explanation is that personality and 'national treasure' or 'golden' status provide an immunity for individuals, which is further bolstered by their legal bluster and reputation for litigiousness.

Examination of the evidence suggests that a range of competing factors influenced the BBC's and other media decisions to avoid allegations relating to Lance Armstrong's doping in the Tour de France races and, in a distinct but analytically comparable case, allegations of sexual abuse made against the late television presenter Jimmy Savile. Both these cases had a number of characteristics that led to a mass media omertà, eventually broken only by a few individual reporters. At a particular point, the evidence for the allegations and public interest in each case was so strong the story could no longer be ignored, despite the social and legal power of both Savile and Armstrong.

Other historical and future cases may benefit from similar analytical treatment, such as the Thorpe Affair with which this chapter opened. While in this chapter I have attempted to avoid a 'simple lumping together of factors' to explain reporting patterns (Benson 2010, 619), the reasons for persistent non-reporting are not easy to identify or isolate and the cases highlight the complex interplay between legal and social factors in deterring journalistic investigation and publication. At a particular stage, there is a tipping point in the life of a set of facts, which transforms or activates them into national and global news, with legal and social inhibitions disregarded (cf. Anderson 2010, 290). How that transformation occurs remains a difficult point of analysis, but it is one that should be attempted as part of an academic and media endeavour to hold power, including celebrities and media personalities, to account.

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<sup>i</sup> A detailed definition and exploration of the 'chilling effect' concept is offered by Townend in H. Tumber and S. Waisbord, eds., *The Routledge Companion to Media and Human Rights* (London and New York: Routledge, 2017), pp. 78–82.

<sup>ii</sup> An exploration of the literature is offered in J. Townend, 'Defamation, Privacy and the "Chill": A Socio-legal Study of the Relationship between Media Law and Journalistic Practice in England and Wales, 2008–13', Doctoral thesis, City, University of London, 2014).

<sup>iii</sup> Published as *LA Confidentiel* in France.

<sup>iv</sup> Pollard notes that, in interviews, Jones 'drew a significant distinction between the story being dropped for "editorial reasons" and "journalistic reasons". The former simply meant that a decision had been taken by the editor. The latter suggested that there was some journalistic logic to the decision' (Pollard, 2012, 91 para. 168).

<sup>v</sup> For example, they printed aggressive stories about the actor Hugh Grant, who appeared as witness at the Inquiry and sent photographers to the house of the mother of his child in November 2012 (see Grant 2011, 6, para. 21).